

MONTANA DEPARTMENT OF CORRECTIONS
Montana Correctional Enterprises (MCE)
Kern Lake Dam Rehabilitation Project

This Agreement (**09-024-MCE**) is between the Montana Department of Corrections, Montana Correctional Enterprises (MCE), 350 Conley Lake Road, Deer Lodge, Montana, 59722 (hereinafter referred to as Department), and **Hydrometrics, Inc.**, 3020 Bozeman Avenue, Helena MT 59601 (hereinafter referred to as Contractor). The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

Section 1. PURPOSE. The purpose of this Agreement is to provide funding for the Contractor to perform engineering and professional services to implement Phase 1 of the Kern Lake Dam Rehabilitation. The scope of work for Phase 1 was outlined by the Montana Dam Safety Program manager and is included as an attachment to this Agreement. Phase 1 is more specifically described as the spillway analysis and rehabilitation and includes the following requirements:

- Assess existing spillway for compliance with State spillway standards
- Analyze existing spillway for stability
- If necessary, develop design report, plans, and specifications for rehabilitation of the spillway to meet State standard for capacity and stability, minimizing the loss of storage
- If necessary, work with the Prison Ranch and Job Corp to modify spillway accordingly. (The Montana State Prison Ranch and Job Corp will provide surveying services and equipment.)

Section 2. CONTRACT TERM. This Contract shall take effect upon receipt of final contract signature and shall terminate upon completion of the project and acceptance by the MCE Liaison, unless terminated earlier in accordance with the terms of this Contract.

Section 3. LIAISON. All communications to the Department concerning this Agreement shall be addressed to Bill Dabney, MCE Ranch Director, 350 Conley Lake Road, Deer Lodge, Montana 59722, phone number 846-1320 extension 2322. All communications to the Contractor shall be addressed to Mike Oelrich, Hydrometrics' Project Manager, 3020 Bozeman Ave., Helena, MT 59601, 406-443-4150.

Section 4. SCOPE OF WORK. Contractor shall be responsible for engineering services that are [generally] described within this section. The Contractor will provide the Department with the following:

- Document and file review of dam site and history (documentation to be included in report submitted to Montana Dam Safety Program)
- Site surveying and topographic map production in 1 foot contours
- Loss of life determination by methods accepted by the Dam Safety Program
- Inflow design flood determination by procedures developed by the Dam Safety Program
- Spillway design
- Construction documents preparation consisting of technical specifications for materials and methods and drawings
- Permitting with the Montana Dam Safety Program
- Design schedule to be completed and submitted to the Montana Dam Safety Program by March 31, 2009

Section 5. COMPENSATION/BILLING. Department shall compensate Contractor for successful delivery of services (or goods), provided pursuant to Section 2, in the following manner:

- A. Department shall pay Contractor a total amount not to exceed **\$17,000.00** (seventeen thousand and 00/100 Dollars) for the services described herein.
- B. Department agrees to pay Contractor within 30 days following receipt of a correct invoice.
- C. Department may withhold payments to Contractor if Contractor has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

Section 6. COMPLIANCE WITH LAW. Contractor must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

Section 7. LAW AND VENUE. The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA)..

Section 8. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Neither Contractor nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. Contractor shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. Contractor shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

Section 9. AMENDMENTS. All amendments to this Contract shall be in writing and signed by the parties.

Section 10. PUBLIC INFORMATION AND OWNERSHIP OF PRODUCTS. Contractor recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. Department has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, Contractor agrees to hold Department harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

All copyrights, patents, or other royalty rights resulting from the completion of this Agreement or the information, reports, records, data documents, materials, and end products of this Agreement shall be the sole

property of Department.

Copies of documents that may be relied upon by Department are limited to the printed copies (also known as hard copies) that are signed or sealed by the Contractor. Files in electronic media format of text, data, graphics, or of other types that are furnished by Contractor to Department are only for the convenience of Department. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Section 11. HOLD HARMLESS AND INDEMNIFICATION. Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, or subcontractors - except the sole negligence of the State under this agreement.

Section 12. ASSIGNMENT, TRANSFER AND SUBCONTRACTING. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of Department. No such written approval shall relieve Contractor of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of Contractor. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

Section 13. ACCESS AND RETENTION OF RECORDS. Contractor agrees to provide Department, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). Contractor agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

Section 14. INTEGRATION. This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

Section 15. TERMINATION.

- A. Department may, by written notice to Contractor, terminate this Contract in whole or in part at any time Contractor fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.

- C. Department, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

Section 16. WAIVER. A waiver of any particular provision of this Agreement by Department shall not be construed as a waiver of any other provision, nor shall any such waiver otherwise preclude Department from insisting on strict compliance with this Agreement in other circumstances.

Section 17. LICENSURE. Contractor agrees to provide copies of current licenses and certifications that register Contractor and any associates performing under this Contract.

Section 18. REPORT(S). Progress Reports are to be submitted to the Department on the last day of each month. The report(s) shall contain a description of the tasks completed, a statement of funds expended, and copies of information and reports relevant to the tasks completed. Failure to provide the report as required may cause Department to terminate this Agreement or withhold payments to the contractor.

Section 19. LIQUIDATED DAMAGES. Department reserves the right to assess liquidated damages in the amount of (one-half of one percent (1/2 of 1%) per calendar workday on the amount of contract price) for failure to comply with the conditions of this Agreement. Assessment of liquidating damages may occur if the Contractor is not making a good faith effort to comply with the conditions of this Agreement. This sum may be deducted from Contractor payment(s). No premium will be awarded to the Contractor for delivery/performance in advance of the specified time.

Section 20. AGREEMENT RENEWAL. This Agreement may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended.

Section 21. INSURANCE REQUIREMENTS.

- A. **General Requirements:** Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by Department. At the request of Department either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. Contractor must immediately notify Department of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. Department reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations; premises owned, leased, occupied, or used.

- C. **Specific Requirements for Professional Liability:** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

Section 22. SPECIAL REQUIREMENTS. The Contractor recognizes that the State operates within the confines of a correctional facility. The Contractor agrees not to hold the State liable for loss of business resulting from delays that are beyond the State's control or, from action required by the State to maintain security and order of the correctional facility.

The Contractor and any representative will comply with the policies and procedures of the Montana State Prison facility. The appropriate security arrangements will be required prior to any activity associated with the scope of work as outlined in this agreement. Montana State Prison is a tobacco free facility. All vehicles and persons entering Montana State Prison facility or Department lands are subject to search.

Section 23. COMPLETED CONTRACT. Department cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

CONTRACTOR

Gayle Lambert
Gayle Lambert, Administrator
Montana Correctional Enterprises

Mike Oelrich
Mike Oelrich
Hydrometrics, Inc.

3/23/2009
Date

3/3/09
Date

Approved for Legal Content by:

Colleen Austin
Legal Counsel
Department of Corrections